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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

METABOLIC MAINTENANCE
PRODUCTS, INC., an Oregon
Corporation,

Plaintiff(s),

v.

ST. IVES LABORATORIES, INC. a
Delaware corporation,

Defendant(s).

CV '11 1060

HZ
No. 1

COMPLAINT FOR RELIEF
For Trademark Infringement,
Unfair Competition, Unfair Trade
Practices, Damages, and Equitable
Relief

JURY TRIAL DEMANDED

COMES NOW Plaintiff, METABOLIC MAINTENANCE PRODUCTS, INC., and by this Complaint seek money damages and equitable relief against Defendant ST. IVES LABORATORIES, INC., a Delaware corporation, for: (1) trademark infringement; (2) unfair competition in violation of Section 43(a) of the Lanham Act; (3) trademark infringement under common law; (4) unfair trade practices in violation of ORS 646.605 et seq.; and, (5) unfair competition under common law, and alleges as follows:

#42429

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over this action. This Court has Federal Question jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338 and 15 U.S.C. § 1121 as an action arising under the laws of the United States, including Lanham Act sections 15 U.S.C. §§ 1111, 1114, 1116, 1117, and 1125.

2. This Court has pendent jurisdiction over the state unfair competition and associated claims under 28 U.S.C. § 1338(b) in that said claims are joined with substantial and related claims under the Trademark Laws of the United States, 15 U.S.C. §§ 1051, *et seq.* This Court also has supplemental jurisdiction pursuant to 28 U.S.C. § 1367. Pursuant to Rule 9(c), Plaintiff pleads that all acts and conditions precedent for establishing jurisdiction have been performed or have occurred.

3. Plaintiff is informed and believes and on that basis alleges that this Court has personal jurisdiction over the Defendant by virtue of its transacting and doing business in this judicial district.

4. Plaintiff is informed and believes and on that basis alleges that venue lies in this judicial district, pursuant to 28 U.S.C. § 1391(b) and/or (c) and the Lanham Act, in that the claims substantially arose in this jurisdiction as a result of acts committed by Defendant within this judicial district in the course of Defendant doing business in this district.

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3 PARTIES

4 5. Plaintiff, METABOLIC MAINTENANCE PRODUCTS, INC., is an
5 Oregon corporation with principal place of business in Sisters, Oregon. Plaintiff
6 advertises, markets, distributes, and sells skin care products, including face
7 care products. As part of its business operations, Plaintiff uses the Mark
8 NATURALLY CLEAR ("the Mark" or "Plaintiff's Mark").
9

10 6. Plaintiff is informed and believes and on that basis alleges that
11 Defendant, ST. IVES LABORATORIES, INC., is a Delaware corporation
12 conducting business in the State of Oregon, and by such extensive conduct,
13 residing in the State of Oregon.

14 COMMON ALLEGATIONS OF FACT

15 7. Plaintiff has sold skin care products, including face care products,
16 under the mark NATURALLY CLEAR since at least as early as October 8,
17 1997. Plaintiff identifies its product lines using the distinctive NATURALLY
18 CLEAR Mark. Plaintiff's Mark is distinctive and/or has acquired secondary
19 meaning in conjunction with the sale and marketing of skin care products,
20 including face care products.
21

22 8. The United States Patent & Trademark Office has registered
23 Plaintiff's Mark NATURALLY CLEAR in typed form on the Principal Register,
24 US Reg. 2,869,793 in August 3, 2004 in International Class 005 for vitamin
25 supplement in the form of a facial spray. Plaintiff's '793 registration is
26 incontestable under the provisions of 15 USC § 1065. A true and correct copy of
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3 Trademark Registration, 2,869,793 is attached as **Exhibit A** hereto and
4 incorporated by reference.

5 9. In addition to owning incontestable US Trademark Registration
6 No. 2,869,793, Plaintiff is the owner of US Trademark Registration No.
7 2,183,138 for NATURALLY CLEAR in typed form, which issued on August 18,
8 1998 in International Class 005 for vitamin supplement in the form of a facial
9 spray. A true and correct copy of Trademark Registration 2,183,138 is attached
10 as **Exhibit B** hereto and incorporated by reference.
11

12 10. In addition to using NATURALLY CLEAR as a mark for goods
13 sold in commerce, Plaintiff uses the Mark as a trade name, Naturally Clear,
14 and the website www.naturallyclear.com to identify its business in selling skin
15 care products, including face care products.
16

17 11. Plaintiff is informed and believes and on that basis alleges that
18 Defendant sells the same or similar product using Plaintiff's Mark to similar
19 consumers. Chart A below is a side by side exemplification of Plaintiff's
20 product, on the left, and Defendant's product, on the right.

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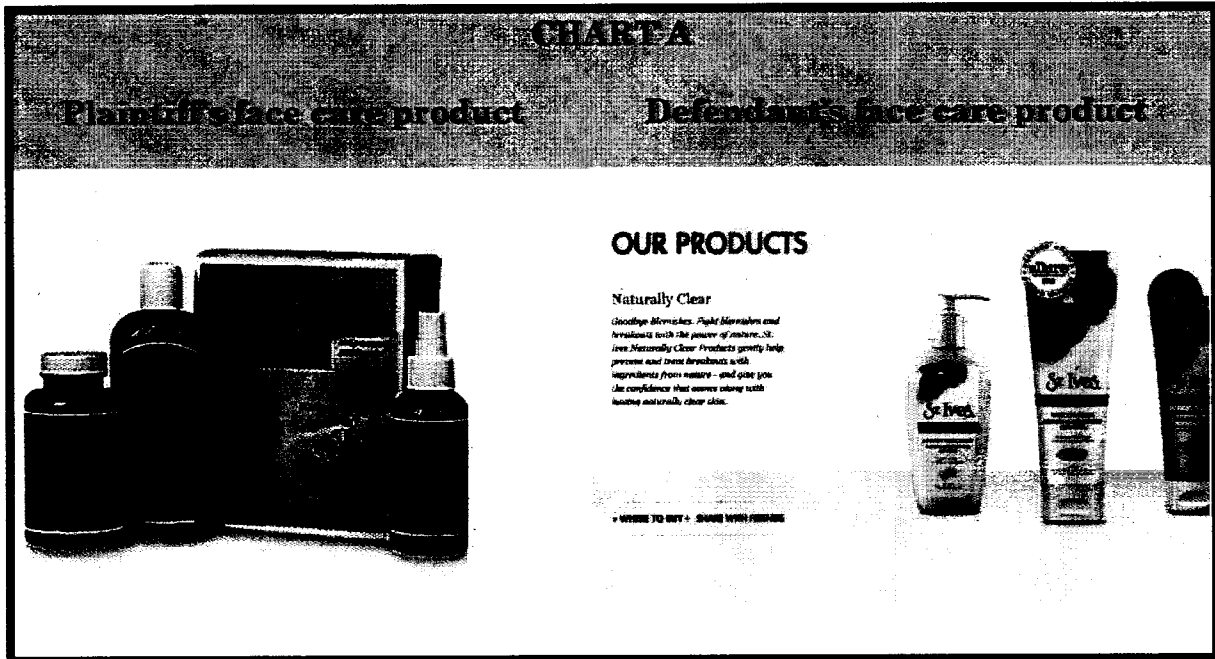
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12. Plaintiff is informed and believes and on that basis alleges that Defendant's products sold under Plaintiff's Mark are related to Plaintiff and/or the conditions surrounding Defendant's marketing are such that the products would be encountered by the same purchasers as Plaintiff's products under circumstances that would give rise to the mistaken belief that the goods come from a common source.

13. Plaintiff is informed and believes and on that basis alleges that the products of Defendant and Plaintiff sold under Plaintiff's Mark are both used to treat skin conditions of the human face, and are accordingly related and would be subject to similar marketing techniques and sold in similar retail outlets.

14. In Plaintiff's registrations for its Mark, the goods are identified broadly, as being a vitamin supplement in the form of a facial spray, and

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3 therefore the registration encompasses all goods of the type described that
4 move in all normal channels of trade, and that are available to all potential
5 customers.

6 15. Plaintiff is informed and believes and on that basis alleges that
7 the goods of both parties are sold in similar stores because they are both sold
8 for very similar purposes, namely, skincare of the face, and therefore
9 consumers who seek out the products of one party could very easily be seeking
10 out products of the other, such that confusion as to source is likely upon seeing
11 such similar marks being used.
12

13 16. Plaintiff has developed significant good will and reputation and
14 derives significant value from use of the NATURALLY CLEAR mark to identify
15 its products and business.
16

17 17. Plaintiff is the exclusive owner of the registered, statutory and
18 common law trademark rights in the NATURALLY CLEAR mark for skin care
19 products, including face care products.

20 18. Plaintiff has expended substantial time and resources to promote
21 its reputation and develop goodwill in its mark NATURALLY CLEAR,
22 including marketing, advertising, and website development.

23 19. Plaintiff markets and sells its products under the NATURALLY
24 CLEAR mark throughout the United States and internationally. Plaintiff
25 markets and sells directly to purchasing consumers, as well as through
26 distributors.
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3 20. Defendant uses Plaintiff's Mark on the packaging and labeling
4 and advertising material for its competing product NATURALLY CLEAR
5 FACIAL PRODUCTS.

6 21. Defendant uses Plaintiff's Mark NATURALLY CLEAR in the
7 meta data, and domain name, of its website(s) and webpage(s), including:

- 8 a. <http://www.stives.com>,
9
10 b. <http://www.stives.com/Products/> and
11 c. <http://www.stives.com/Facial-Products/Naturally-Clear/> .

12 22. Plaintiff is informed and believes and on that basis alleges that
13 Defendant's use of Plaintiff's Mark NATURALLY CLEAR in Defendant's sales,
14 advertising, labeling, packaging, meta data, and websites is likely to confuse
15 consumers searching for Plaintiff's products on the Internet.

16 23. Defendant's use of the URL [http://www.stives.com/Facial-](http://www.stives.com/Facial-Products/Naturally-Clear/)
17 [Products/Naturally-Clear/](http://www.stives.com/Facial-Products/Naturally-Clear/) will misdirect consumers seeking Plaintiff's website
18 and intending to shop for Plaintiff's products by taking these consumers
19 directly to Defendant's infringing website.
20

21 24. Plaintiff is informed and believes and on that basis alleges that
22 Defendant use of the product name NATURALLY CLEAR and/or website
23 domain <http://www.stives.com/Facial-Products/Naturally-Clear/>, and/or meta
24 data "naturally clear" is confusingly similar to and likely to be confused with
25 Plaintiff's Mark. Defendant has used the terms to market and sell goods and
26 services which are substantially similar, in fact nearly identical, to those
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3 marketed by Plaintiff using Plaintiff's Mark, in the same geographic area, and
4 continues to do so. Specifically, Defendant has used and continues to use
5 Plaintiff's Mark to market and sell skin care products, including face care
6 products.

7 25. Plaintiff is informed and believes and on that basis alleges that
8 Plaintiff's products and Defendant's products are likely to be sold to, and or
9 sought by, the same or similar customers, thus increasing the likelihood of
10 confusion.
11

12 26. Plaintiff competes against Defendant in the marketplace, and
13 specifically in the market for skin care products, including face care products.

14 27. Plaintiff is informed and believes and on that basis alleges that
15 Defendant's use of the confusingly similar name and website for the same or
16 similar types of products as those covered by Plaintiff's Mark is likely to
17 confuse customers, and/or has confused customers, into believing that
18 Defendant is the Plaintiff and/or that Defendant's products are the products of
19 Plaintiff and/or are sponsored by, approved by, connected to, affiliated with, or
20 associated with Plaintiff or Plaintiff's product, and/or that Defendant's products
21 and Plaintiff's products have the same or similar source; and Plaintiff was
22 damaged and/or is likely to continue to be damaged by the actions of
23 Defendant.
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25 28. Plaintiff is informed and believes and on that basis alleges that
26 Defendant's infringing use was and is willful and knowing; that Defendant's
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3 use of Plaintiff's Mark was and is without the consent of Plaintiff; that
4 Defendant has knowledge of Plaintiff company, mark and website; that
5 Defendant was put on notice by Plaintiff that Defendant's use of Plaintiff's
6 Mark and confusingly similar versions of Plaintiff's Mark was unauthorized;
7 that as of the date of this Complaint, Defendant has not stopped its use; and
8 that Defendant uses Plaintiff's Mark NATURALLY CLEAR as a product name,
9 web name, and meta tag advertising term specifically and intentionally to
10 trade on Plaintiff's Mark and goodwill.
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12 29. Defendant's ongoing infringing activities are causing, and will
13 continue to cause, irreparable harm to Plaintiff, which cannot be fully
14 compensated by money damages.

15 30. Plaintiff is informed and believes and on that basis alleges that
16 Defendant intends to continue its infringing actions in the future, and Plaintiff
17 will continue to suffer harm, including confusion by consumers in the
18 marketplace.
19

20 31. The public has an overriding interest in avoiding confusion of
21 trade names and marks and in the enforcement of trademark laws.

22 32. Plaintiff is informed and believes and on that basis alleges that
23 Defendant has used NATURALLY CLEAR as product names and web names to
24 advertise, ship to, and sell goods in Oregon which compete with Plaintiff's
25 goods in the same channels of commerce, and has shipped these products to one
26 or more purchasers in Oregon.
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3 33. As of the date of the filing of this suit, Defendant has not ceased
4 using the confusing name, including use of NATURALLY CLEAR product
5 name and the associated website(s), despite being put on notice. All notices to
6 the parent company of St. Ives are deemed notice to Defendant.

7
8 34. Plaintiff is informed and believes and on that basis alleges that
9 Defendant used and uses names and terms substantially similar to and likely
10 to be confused with Plaintiff's Mark in the same geographic area, and continues
11 to do so, for the purpose of marketing skin care products, including face care
12 products, directly competing with the skin care products, including face care
13 products, of Plaintiff.

14 35. Plaintiff is informed and believes and on that basis alleges that
15 Defendant's use of its confusingly similar name, including use of NATURALLY
16 CLEAR and the associated website(s), for the same or similar products in the
17 same geographic areas as those covered by Plaintiff's Mark is likely to confuse
18 customers into believing that Defendant is the Plaintiff and/or that Defendant's
19 products are the products of Plaintiff and/or are sponsored by, affiliated with,
20 or associated with Plaintiff; that Defendant's offending use, including use of
21 NATURALLY CLEAR and the associated website(s), is so similar in
22 appearance, sound, and meaning to Plaintiff's Mark, particularly when used in
23 conjunction with the sale of skin care products, including face care products,
24 that its use is likely to cause confusion among or cause mistake by or deceive
25 ordinary purchasers of Plaintiff's products as to the source, affiliation,
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3 attribution connection, and/or association of Defendant or Defendant's products
4 with Plaintiff or Plaintiff's products; that Defendant's offending use, including
5 use of NATURALLY CLEAR and the associated website(s), is so similar in
6 appearance, sound, and meaning to Plaintiff's Mark, particularly when used in
7 conjunction with the sale of skin care products, including face care products,
8 that Defendant's use is likely to cause confusion among or cause mistake by or
9 deceive ordinary purchasers of Plaintiff's products as to the sponsorship and
10 approval of Defendant's products and activities by Plaintiff, and Plaintiff was
11 damaged and is likely to continue to be damaged by Defendant's acts.
12

13 FIRST CLAIM FOR RELIEF

14 (Trademark Infringement under the Lanham Act)

15 36. Plaintiff re-alleges every paragraph in this Complaint.

16 37. Plaintiff is the exclusive owner of the common law and statutory
17 rights to the NATURALLY CLEAR Mark for skin care products, including face
18 care products.
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20 38. Plaintiff uses its Mark to identify Plaintiff's goods and services in
21 commerce. Plaintiff derives substantial value, good will, and business
22 reputation from the exclusive use by Plaintiff of Plaintiff's Mark. Because of
23 Plaintiff's exclusive use of its registered mark and the good will and reputation
24 associated with Plaintiff goods, Plaintiff's Mark has developed significance in
25 the minds of the public as an identifier of the source and quality of Plaintiff's
26 goods and services.
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3 39. Plaintiff's Mark is inherently distinctive and/or among the skin
4 care products, including face care products, community in Oregon, it has
5 acquired distinctiveness; the use of the Mark in connection with skin care
6 products, including face care products, has endured over time; Plaintiff has
7 used the Mark for its goods and services in the relevant marketplace; and that
8 there is significant recognition by consumers in the relevant marketplace of
9 Plaintiff's Mark.
10

11 40. Plaintiff is informed and believes and on that basis alleges that
12 Defendant infringed and misappropriated Plaintiff's registered trademark in
13 commerce without permission; that Defendant's infringing uses of Plaintiff's
14 registered mark are likely to and/or have caused actual confusion with
15 consumers as to the source of goods and affiliation of Defendant to Plaintiff;
16 that Defendant's infringing uses diminish the value of Plaintiff's Mark,
17 goodwill and business reputation; and that the nature and extent of
18 misappropriation of Plaintiff's Mark by Defendant is significant and willful.
19

20 41. Plaintiff is informed and believes and on that basis alleges that
21 Defendant's acts were willful, malicious and knowing, and that this is an
22 exceptional case under 15 U.S.C. §1117.
23

24 42. Plaintiff has and will suffer immediate irreparable damage and
25 ongoing harm to its business, reputation, and goodwill by reasons of
26 Defendant's unlawful acts unless Defendant is restrained and enjoined, and
27 Plaintiff is without adequate remedy at law.
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3 43. Accordingly, Defendant is liable to Plaintiff for recovery of all of
4 Defendant's profits, for Plaintiff's damages, for statutory treble damages, and
5 for attorneys' fees and costs.

6 SECOND CLAIM FOR RELIEF

7 (Violation of Section 43(a) of the Lanham Act)

8 44. Plaintiff re-alleges every paragraph in this Complaint.

9
10 45. Defendant engaged in unfair competition in violation of Section 43
11 of the Lanham Act, 15 U.S.C. § 1125.

12 46. Plaintiff's NATURALLY CLEAR Mark has become uniquely
13 associated with the Plaintiff and is distinctive in the skin care products
14 marketplace.

15 47. Plaintiff is informed and believes and on that basis alleges that
16 Defendant has engaged in unfair competition against Plaintiff in violation of
17 Section 43(a) of the Lanham Act; that Defendant marketed and market in the
18 same market place and geographic business area skin care products, including
19 face care products, under the attribution NATURALLY CLEAR in such as way
20 as to be confusingly similar, and to look like, Plaintiff's Mark and by that
21 marketing falsely advertised and advertises and falsely represented and
22 represent Defendant and/or Defendant's goods and services in a manner which
23 reasonably implies that Defendant either is the same as or is affiliated with
24 Plaintiff, and/or Defendant's goods and services are those of Plaintiff, and
25 Defendant causes, has caused, and is likely to continue to cause a likelihood of
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3 confusion, mistake and deception as to the affiliation, attribution, connection or
4 association of Defendant and/or Defendant's goods and services with Plaintiff.

5 48. Plaintiff is informed and believes and on that basis alleges that
6 Defendant's aforesaid advertising and promotional activities misrepresent the
7 nature, characteristics, and qualities of its commercial activities.

8
9 49. Plaintiff is informed and believes and on that basis alleges that
10 Defendant's unauthorized uses of Plaintiff's Mark and confusingly similar
11 versions of Plaintiff's Mark, are likely to cause, have caused, and will continue
12 to cause likelihood of confusion, mistake, and deception as to the origin of
13 Defendant's goods and services and as to the sponsorship, approval, affiliation,
14 or attribution of Defendant or Defendant's goods and services.

15 50. Defendant has refused to cease and desist from its unlawful
16 activities despite Plaintiff's demand.

17
18 51. Plaintiff is entitled to compensation to the extent possible for
19 damages, general and special, consequential, and incidental, in an amount to
20 be proven at trial, for the harm caused by Defendant, and for attorneys' fees,
21 costs, and pre- and post-judgment interest.

22 52. Plaintiff is informed and believes and on that basis alleges that
23 Defendant's acts were willful, malicious and knowing, and that this is an
24 exceptional case under 15 U.S.C. §1117.

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26 53. Plaintiff has and will suffer immediate irreparable damage and
27 ongoing harm to its business, reputation, and goodwill by reasons of
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3 Defendant's unlawful acts unless Defendant is restrained and enjoined, and
4 Plaintiff is without adequate remedy at law.

5 54. Accordingly, Plaintiff demands an amount of money damages to
6 compensate the Plaintiff for the harm caused, including but not limited to
7 Defendant's profits, statutory and/or punitive damages, as well as equitable
8 relief, attorneys' fees, costs, and interest.

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10 THIRD CLAIM FOR RELIEF

11 (Trademark Infringement under Common Law)

12 55. Plaintiff re-alleges every paragraph in this Complaint.

13 56. Plaintiff is the sole owner of the distinctive trademark
14 NATURALLY CLEAR for skin care products, including face care products.
15 Plaintiff uses the Mark to identify Plaintiff's goods and services in commerce.
16 Plaintiff derives substantial value, good will, and business reputation from the
17 exclusive use of Plaintiff's Mark in the relevant marketplace, including Oregon,
18 as well as throughout the United States. Because of Plaintiff's exclusive use of
19 its registered Mark and the good will and reputation associated with Plaintiff,
20 Plaintiff's Mark has developed secondary meaning and significance in the
21 minds of the public.
22

23 57. Defendant infringed and misappropriated Plaintiff's Mark in
24 commerce without permission. Defendant's infringement is likely to and has
25 caused confusion by the public and diminishes the value of Plaintiff mark,
26 goodwill and business reputation.
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3 58. Plaintiff is informed and believes and on that basis alleges that
4 Defendant's misappropriation of Plaintiff's labors and expenditures in creating
5 and building Plaintiff's Mark has likely caused actual confusion and is likely to
6 continue to cause confusion and to deceive the public as to the origin of
7 Defendant's goods and services and business and/or Defendant's relationship to
8 Plaintiff.

9
10 59. The acts of the Defendant constitute infringement of Plaintiff's
11 Mark under Oregon law.

12 60. Plaintiff is informed and believes and on that basis alleges that
13 Defendant willfully and maliciously infringed in commerce Plaintiff's Mark;
14 that by its aforesaid conduct Defendant willfully, maliciously, and in bad faith
15 attempted to pass off its business and/or goods and services as the business
16 and/or goods and services of Plaintiff or as an affiliate of Plaintiff, and is
17 attempting to falsely and fraudulently deceive the marketplace to the
18 substantial detriment of Plaintiff's business, reputation, and good will.
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20 61. Plaintiff is informed and believes and on that basis alleges that
21 Defendant's infringement was and is knowing, willful, and malicious.

22 62. Plaintiff is entitled to compensation to the extent possible in
23 damages, general and special, consequential, and incidental, in an amount to
24 be proven at trial, for the harm caused by Defendant, and for attorneys' fees,
25 costs, and pre- and post-judgment interest.
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27 63. Plaintiff has and will suffer immediate irreparable damage and
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3 ongoing harm to its business, reputation, and goodwill by reasons of
4 Defendant's unlawful acts unless Defendant is restrained and enjoined, and
5 Plaintiff is without adequate remedy at law.

6 64. Accordingly, Plaintiff demands an amount of money damages to
7 compensate the Plaintiff for the harm caused, including but not limited to
8 Defendant's profits, statutory and/or punitive damages, as well as equitable
9 relief, attorneys' fees, costs, and interest.
10

11 FOURTH CLAIM FOR RELIEF

12 (Unlawful Trade Practices in Violation of ORS 646.605 et seq.)

13 65. Plaintiff re-alleges every paragraph in this Complaint.

14 66. Plaintiff is informed and believes and on that basis alleges that
15 Defendant, by its aforesaid conduct, committed unfair trade practices in
16 violation of ORS 646.605 et seq., that Defendant willfully engaged, and
17 engages, in practices and acts that causes likelihood of confusion or of
18 misunderstanding as to the source, sponsorship, approval, or certification of
19 Defendant's goods and/or as to affiliation, connection, or association with, or
20 certification by, Plaintiff and/or Plaintiff's products and/or that represents that
21 Defendant's goods to have sponsorship or approval that they do not have or a
22 status, qualification, affiliation, or connection that Defendant does not have.
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24 67. Plaintiff is informed and believes and on that basis alleges that
25 Defendant's unlawful acts were and are knowing, willful, and malicious.
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27 68. Plaintiff is entitled to compensation to the extent possible in
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3 damages, general and special, consequential, and incidental, in an amount to
4 be proven at trial, for the harm caused by Defendant, and for attorneys' fees,
5 costs, and pre- and post-judgment interest.

6 69. Plaintiff has and will suffer immediate irreparable damage and
7 ongoing harm to its business, reputation, and goodwill by reasons of
8 Defendant's unlawful acts unless Defendant is restrained and enjoined, and
9 Plaintiff is without adequate remedy at law.

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11 70. Accordingly, Plaintiff demands an amount of money damages to
12 compensate the Plaintiff for the harm caused, including but not limited to
13 Defendant's profits, statutory and/or punitive damages, as well as equitable
14 relief, attorneys' fees, costs, and interest.

15 FIFTH CLAIM FOR RELIEF

16 (Unfair Competition under Common Law)

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18 71. Plaintiff re-alleges every paragraph in this Complaint.

19 72. Defendant has willfully, maliciously, and in bad faith attempted to
20 pass off its business and/or goods and services as the business and/or goods and
21 services of Plaintiff or as an affiliate of Plaintiff, and attempt to falsely and
22 fraudulently deceive the marketplace to the substantial detriment of Plaintiff's
23 business, reputation, and good will.

24 73. Defendant's misappropriation of Plaintiff's labors and
25 expenditures in creating and building the distinctive reputation of Plaintiff is
26 likely to and has caused actual confusion, and is likely to continue to cause
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3 confusion and to deceive the public as to the origin of Defendant's goods and
4 services and business and/or Defendant's relationship to Plaintiff.

5 74. The acts of the Defendant constitute unfair competition against
6 the Plaintiff under the common law.

7 75. Plaintiff is informed and believes and on that basis alleges that
8 Defendant's unlawful acts were and are knowing, willful, and malicious.

9 76. Plaintiff is entitled to compensation to the extent possible in
10 damages, general and special, consequential, and incidental, in an amount to
11 be proven at trial, for the harm caused by Defendant, and for attorneys' fees,
12 costs, and pre- and post-judgment interest.

13 77. Plaintiff has and will suffer immediate irreparable damage and
14 ongoing harm to its business, reputation, and goodwill by reasons of
15 Defendant's unlawful acts unless Defendant is restrained and enjoined, and
16 Plaintiff is without adequate remedy at law.

17 78. Accordingly, Plaintiff demands an amount of money damages to
18 compensate the Plaintiff for the harm caused, including but not limited to
19 Defendant's profits, statutory and/or punitive damages, as well as equitable
20 relief, attorneys' fees, costs, and interest.

21
22
23 PRAYER FOR RELIEF

24 WHEREFORE Plaintiff prays for judgment in its favor as follows:

- 25 A. For judgment in favor of Plaintiff against Defendant on all claims;
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27 B. Declaring Plaintiff's Mark valid and infringed by Defendant;
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3 C. Enjoining and Restraining Defendant temporarily, preliminarily,
4 and permanently:

5 (1) from directly or indirectly using Plaintiff's Mark or any
6 confusingly similar version or imitation thereof in relation to Defendant's
7 marketing, sale, and/or description of Defendant's business or goods and
8 services;

9
10 (2) from using Plaintiff's Mark or any confusingly similar
11 version or imitation thereof in any advertising or promotional material,
12 whether printed, verbal, broadcast, electronically transmitted or otherwise;

13 (3) from using Plaintiff's Mark or any confusingly similar
14 version or imitation thereof on or in connection with any Internet address
15 owned or controlled, in whole or in part, by Defendant, Defendant's privies,
16 and/or Defendant's relatives, associates, agents, successors in interest,
17 employees, principals, officers, and shareholders;

18
19 (4) from using the Plaintiff's Mark or any confusingly similar
20 version or imitation thereof in any radio, television, or other media advertising;
21 and,

22 (5) to remove those portions of Defendant marketing material
23 and website which are similar to Plaintiff's Mark from each and every of
24 Defendant's business addresses, locations, and signage, and from any and all
25 literature, documentation, advertisements, business cards, vehicles, brochures,
26 of any type or kind;
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3 (6) to remove the Plaintiff's Mark and any confusingly similar
4 name or designation from each and every of Defendant's web site pages and
5 whatever web site address Defendant use, and from any and all literature,
6 documentation, advertisements, brochures, of any type or kind;

7 D. Ordering Defendant to identify the location and content of any and
8 all production facilities, stores, inventories, stockpiles or distribution centers
9 containing infringing articles of which it has knowledge, including products,
10 accessories, designs, logos, prints, electronic files, and any other things, of
11 which Defendant has knowledge, whether owned or controlled by Defendant or
12 any other party;
13

14 E. Ordering impoundment, destruction and verification of such
15 destruction, of any things identified in the preceding paragraph;
16

17 F. Enjoining and Restraining Defendant(s) to write to each and every
18 customer of Defendant who has ordered for Defendant's skin care products,
19 including face care products, from Defendant wherein the purchase or product
20 was associated with the term "naturally clear", and in such writing to state
21 that Defendant is not related to, affiliated with, associated with, or sponsored
22 by Plaintiff, and do not have any relationship with Plaintiff, that Defendant's
23 goods and services are not those of Plaintiff, and further to provide the
24 address and phone number of Plaintiff to each customer, and finally to return
25 to the Court with a copy to Plaintiff's attorney of proof of compliance with this
26 Order within ninety (90) days of entry thereof;
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3 G. Enjoining and Restraining Defendant temporarily, preliminarily,
4 and permanently, from further violations of the Lanham Act and ORS 646.605
5 et seq.;

6 H. Ordering an Accounting and Disgorgement of Defendant's profits
7 made while using the Plaintiff's Mark to market, promote, and/or sell
8 Defendant's products, whether directly or through other parties, such
9 Accounting to include tracing the monies and property received by Defendant
10 to its real and personal property and bank and brokerage accounts, and
11 Disgorgement thereof;

12
13 I. Awarding to Plaintiff compensatory, general and special,
14 consequential and incidental damages in an amount to be determined at trial;

15 J. Awarding exemplary, punitive, statutory, treble damages to
16 Plaintiff against Defendant, jointly and severally;

17 K. Declaring this to be an exceptional case within 15 U.S.C. § 1117;

18 L. Awarding Plaintiff's its reasonable attorneys' fees and costs,
19 including costs for experts, pursuant to State and Federal law;

20 M. Awarding Pre- and post- judgment interest; and

21 N. Entering such other and further relief as the Court deems
22 appropriate.
23

24 JURY DEMAND

25 Plaintiff hereby demands trial by jury in this action.

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27 DATED This 8/30/11
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KURT M. RYLANDER, OSB 94427

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RYLANDER & ASSOCIATES PC

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Of Attorneys for Plaintiff

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Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51 and 52

United States Patent and Trademark Office

Reg. No. 2,869,793

Registered Aug. 3, 2004

**TRADEMARK
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NATURALLY CLEAR

**METABOLIC MAINTENANCE PRODUCTS, INC.
(OREGON CORPORATION)
P.O. BOX 3600
68994 NORTH PINE STREET
SISTERS, OR 97759**

FIRST USE 10-8-1997; IN COMMERCE 10-8-1997.

OWNER OF U.S. REG. NO. 2,183,138.

SER. NO. 78-296,879, FILED 9-5-2003.

**FOR: VITAMIN SUPPLEMENT IN THE FORM OF
A FACIAL SPRAY, IN CLASS 5 (U.S. CLS. 6, 18, 44, 46,
51 AND 52).**

RON FAIRBANKS, EXAMINING ATTORNEY

Int. Cl.: 5

Prior U.S. Cls.: 6, 18, 44, 46, 51, and 52

Reg. No. 2,183,138

United States Patent and Trademark Office

Registered Aug. 18, 1998

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**FOR: VITAMIN SUPPLEMENT IN THE
FORM OF A FACIAL SPRAY, IN CLASS 5 (U.S.
CLS. 6, 18, 44, 46, 51 AND 52).**

**FIRST USE 10-8-1997; IN COMMERCE
10-8-1997.**

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S.R. 5-8-1998.**

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